

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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McCORMICK & CO., INC.,

Case No.: 07-CV-7244 (SCR)

Plaintiff,

-against-

AFFIDAVIT  
OF JEFF JOHNS

KARI-OUT CLUB, LLC, t/a KARI-OUT CO.,

Defendant.

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PERK UP, INC., s/h/a KARI-OUT CLUB, LLC,  
t/a KARI-OUT CO.,

Third Party Plaintiff,

-against-

SHAMBAUGH & SON, LP,

Third Party Defendant.

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STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK    )

JEFF JOHNS, being duly sworn, deposes and says:

1. I am Vice President and Group Manager of the Food and National Process Group for SHAMBAUGH & SON, L.P. ("SHAMBAUGH"), and I have been employed by SHAMBAUGH since June 30, 1999. I am responsible for all food related project activities.

2. I am fully familiar with the facts set forth in this Affidavit based upon my own personal knowledge and my review of records that were (1) prepared and maintained in the regular course of SHAMBAUGH's business, (2) within the regular course of SHAMBAUGH's business to make, and (3) created at the time of the act, transaction, occurrence, or event referred to therein or within a reasonable time thereafter.

3. I submit this Affidavit in support of SHAMBAUGH's motion for an Order directing that Indiana law apply to this litigation and dismissing the Third-Party Complaint against SHAMBAUGH.

4. SHAMBAUGH is a foreign limited partnership created in Texas with its principal place of business at 7614 Opportunity Drive, Fort Wayne, Indiana.

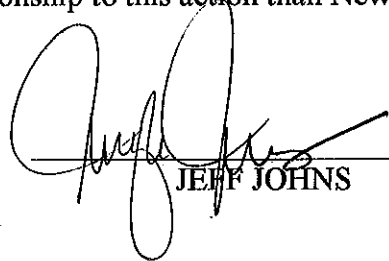
5. SHAMBAUGH does not maintain an office in New York.

6. SHAMBAUGH and McCORMICK entered into a Contract on or about August 21, 2006 whereby SHAMBAUGH agreed to provide engineering and construction services to McCORMICK for the purpose of expanding the ketchup, jelly, and salad dressing production activities and cold storage capacity at McCORMICK's plant in South Bend, Indiana (hereinafter referred to as "the Contract").

7. A true and accurate copy of the Contract is annexed SHAMBAUGH's moving papers as Exhibit "F."

8. The majority of negotiations between SHAMBAUGH and McCORMICK over the terms of the Contract occurred in Indiana. The final contract was executed in SHAMBAUGH's Indiana office.

9. Based on the above, Indiana law should apply to the instant action because Indiana clearly has a much stronger relationship to this action than New York.



JEFF JOHNS

Sworn to before me this

24<sup>th</sup> day of January, 2008

Cynthia M. Duck

Notary Public

Commission Expires 7/21/08  
Residence: Allen County